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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 198.

THE HOWE MACHINE COMPANY, PAINTIFF IN ERROR,

vs.

JESSE CAGE, CLERK OF THE COUNTY COURT OF SUMNER COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED SEPTEMBER 28, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 198.

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vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Tennessee, sitting at Nashville, in said State, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of Tennessee, sitting at Nashville, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had, in the said suit between the Howe Machine Company, plaintiff, and Jesse Cage, clerk of the county court of Sumner County, Tennessee, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the Howe Machine Company, as by its complaint appears: We being willing

2 that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 3rd day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

E. R. CAMPBELL,
Clerk of the Circuit Court of the U. S. for the Middle District of Tennessee.

Allowed by—

JAS. W. DEADERICK,
Chief Justice of the Supreme Court of Tennessee.

2½ (Indorsed:) The Howe Machine Company v. Jesse Cage, clerk of the county court of Sumner county, Tennessee. Writ of error.

3 UNITED STATES OF AMERICA, *ss:*

To Jesse Cage, clerk of the county court of Sumner County, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2nd Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Tennessee for the middle division of said State, wherein the Howe Machine Company is plaintiff in error and you are defendant in error, to show cause, if any there be,

why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 3d day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

JAS. W. DEADERICK,
Chief Justice of Supreme Court of Tennessee.

4 I acknowledge service of the within citation and the delivery of a copy of the same.

J. B. HEISKELL.
Attorney-General of Tennessee and Att'y for Jesse Cage, Clerk.

(Indorsed:) Howe Machine Company v. Jesse Cage, clerk, &c.

5 To the honorable James W. Deaderick, chief justice of the supreme court of the State of Tennessee:

The petition of the Howe Machine Company, a corporation chartered by the laws of the State of Connecticut, and having its principal place of business for the State of Tennessee in the city of Nashville, respectfully shows unto your honor, that in the record and proceedings herewith exhibited, in which the said The Howe Machine Company is plaintiff, and Jesse Cage, clerk of the county court of Sumner County, Tennessee, is defendant, there is manifest error, in this, that the said The Howe Machine Company claimed that the law of the State of Tennessee under which said company was required to pay a tax for the privilege of peddling sewing machines was void, because the constitution of the State of Tennessee exempts from taxation any article which is manufactured of the produce of the State, and the statute laws of the
6 State of Tennessee exempt from taxation sales by peddlers of articles manufactured or made up in said State; which provisions of the constitution and laws of the State of Tennessee, being a levy of duty on imports from another State, are repugnant to the constitution of the United States; and the supreme court of the State of Tennessee decided in favor of the validity of the State law taxing said privilege of selling sewing machines, and that said provisions of the constitution and laws of the State of Tennessee were not in conflict with the constitution of the United States, and that the said The Howe Machine Company could not recover from said Jesse Cage, clerk, &c., the sum exacted as the tax on said privilege.

Your petitioner therefore prays the honorable chief justice to allow a writ of error from the Supreme Court of the United States to the
7 supreme court of the State of Tennessee, and to issue a citation to the said Jesse Cage, clerk of the county court of Sumner County, to appear before the Supreme Court of the United States at Washington, the 2nd Monday in October, 1877, to answer said writ according to law.

THE HOWE MACHINE CO.,
By GEO. H. OWEN, *Manager.*

Sworn to & subscribed before me this 3d day of March, 1877.

JAS. W. DEADERICK,
Chief Justice of the Supreme Court of Tennessee.

(Indorsed:) Howe Machine Company v. Jesse Cage, clerk, &c.

7½ Be it remembered, that at a supreme court of errors and appeals, began and held at the capitol, in the city of Nashville, on the

first Monday in January, A. D. 1877, it being the 1st day of January, 1877, for the 5th, 6th, 7th, 8th, 9th, 10th, and 11th judicial circuits, present, the Hon. Chief Justice James W. Deaderick, and associate justices Jno. L. T. Sneed, Thos. J. Freeman, P. Turney, and Robt. McFarland, when the following proceedings were had, to wit:

On the 27 day of November, 1876, a transcript from the circuit court of Sumner County, Tennessee, was filed; which is as follows:

8 STATE OF TENNESSEE,
Sumner County:

Be it remembered that at a circuit court begun & held in and for the county aforesaid, at the court-house in the town of Gallatin, on this the 23rd day of October, in the year of our Lord one thousand eight hundred & seventy-six, it being the fourth Monday in the month, and the day fixed by law for holding the court, there was present and presiding the Hon. Jo. C. Guild, by law judge of said court, when the following proceedings were had and entered of record, to wit:

Warrant.

STATE OF TENNESSEE,
Sumner County:

To any lawful officer within said county:

You are hereby commanded to summon Jesse Cage, clerk of the county court of Sumner County, to personally appear before
9 or some other acting justice of the peace for said county, to answer the complaint of the Howe Machine Company, in a plea of debt due, by his having unlawfully and illegally, as clerk of the county court of Sumner County, Tennessee, collected and received from said Howe Machine Company, or their agent, the sum of fifteen dollars, State tax, & three dollars, costs, for the privilege of peddling sewing machines in Sumner County for the year 1876, which said $15 and costs were paid under protest under act 1873.

March 30th, 1876.

Given under my hand and seal the 10th day of April, 1876.

S. HEERMANS,
Justice of the Peace.

(Endorsement:)

Executed and set for hearing on the 12th day of April, 1876, before S. Heermans, esq., at 9 o'clock.

W. A. CARTER.
Constable.

10 *Judgment.*

Judgment for the defendant against the plaintiffs for costs of this suit, for which execution may issue, from which the plaintiffs pray an appeal, which is granted, they having given bond and security.

This the 12th day of April, 1876.

S. HEERMANS, *J. P.*

Entries on the minutes.—November 13th, 1876.

HOWE SEWING MACHINE CO.
vs.
JESSE CAGE, CLERK, &C.

This cause, coming on to be heard on this day, was, by agreement of parties, submitted to his honor Jo. C. Guild, upon an agreed state of

facts, without the intervention of a jury, when his honor, after argument, adjudged and decreed that the plaintiffs are properly liable to pay
11 a tax for exercising the privilege of peddling or selling sewing machines in Sumner County, and that Jesse Cage, clerk of said county, had a right in the law to collect the tax, and that the plaintiffs have no right to recover the same back from him.

It is therefore considered by the court that the judgment of the justice in favor of the defendant be affirmed, and that the plaintiffs pay the costs of this cause, for which execution may issue against them and John F. White, security on their appeal bond.

THE HOWE SEWING MACHINE CO.
vs.
JESSE CAGE, CLERK.

NOVEMBER 13TH, 1876.

The plaintiff moved for a new trial, which motion is by the court overruled, to which plaintiffs except.

THE HOWE SEWING MACHINE CO.
vs.
JESSE CAGE, CLERK.

NOVEMBER 13TH, 1876.

The plaintiffs tendered their bill of exceptions to the judgment
12 of the court overruling their motion for a new trial, which being signed and sealed by the court, is ordered to be made a part of the record.

THE HOWE SEWING MACHINE CO.
vs.
JESSE CAGE, CLERK.

NOVEMBER 13TH, 1876

The plaintiffs pray an appeal in the nature of a writ of error to the next term of the supreme court at Nashville, and having given bond with Jas. W. Blackmore, security, the same is granted.

Bill of exceptions.

THE HOWE MACHINE CO.
vs.
JESSE CAGE CLERK, &C.

On the trial of this case the following evidence was submitted to the court:

Agreement as to facts.

THE HOWE MACHINE CO.
vs.
JESSE CAGE, CLERK, &C.

13 In this cause it is agreed that the Howe Machine Company is a duly incorporated company; that they manufacture sewing machines at Bridgeport, Connecticut; have their principal office in Ten-

nessee at Nashville; that they paid the State tax for 1876, for Sumner County, of $15.00, and $3.00 costs thereon, to Jesse Cage, clerk of the county court of Sumner County, under protest, as shown by said Cage's receipt, and that said Cage entered the same on his books as having been paid under protest, and so reported it to the comptroller; that W. H. Stickley is their agent in Sumner County, for the purpose of selling or peddling machines, & travels through the country in a one-horse wagon for the purpose of exhibiting and effecting sales of the machines of the said Howe Machine Company; that the tax collected in this instance
14 from said Stickley was collected from him as due upon the privilege or license to peddle or sell the sewing machines of the said Howe Machine Company in Sumner County, Tennessee, as the agent of said company; that the machines sold & offered for sale by him are manufactured in the State of Connecticut, and brought here for sale; and the tax herein sued for is a tax upon the privilege of peddling said machines in Sumner County.

It is agreed that the above may be read on the trial of the above case as facts, the same as if proven, and that we submit the case to the determination of the court without the intervention of a jury.

G. W. & B. F. ALLEN,
Att'ys for Cage.
SEAY & BLACKMORE,
Att'ys for Howe Machine Co.

Receipt of Cage.

Rec. of W. H. Stickley, agent of the Howe Machine Co., fifteen
15 dollars, in full of the State tax due from him as such agent, for one year from the 1st Jan., 1876; also three dollars, two of which was my fee, and one the fee of W. N. Carter, constable, which fifteen dollars was collected of him for the privilege of peddling sewing machines.

The above amounts were paid under protest.

Gallatin, this 30th March, 1876.

JESSE CAGE,
Clerk Sumner Co. Court.

Close of evidence.

This was all the evidence.

Bill of exceptions signed.

The plaintiffs tender this their bill of exceptions to the judgment of the court overruling their motion for a new trial, which is signed, sealed, & ordered to be made a part of the record in this cause, Nov. 13, 1876.

JO. C. GUILD, *Judge.*

16 *Appeal bond.*

We, the Howe Machine Company, & Jas. W. Blackmore, acknowledge ourselves indebted to Jesse Cage, clerk of the county court of Sumner Co., in the sum of two hundred & fifty dollars, to be void on consideration the said The Howe Machine Company shall successfully prosecute an appeal in the nature of a writ of error to the next term of the supreme court of Tennessee, at Nashville, by them prayed from a

judgment rendered against them in favor of the said Jesse Cage, clerk, &c., in the circuit court of Sumner County, on the 13th day of Nov., 1876, for the sum of costs of suit, or in case of failure to do so, pay costs & perform and satisfy the judgment of the supreme court in the premises.

THE HOWE MACHINE COMPANY,
By SEAY & BLACKMORE, *Att'ys.*
JAS. W. BLACKMORE, *Security.*

17 *Certificate of clerk.*

STATE OF TENNESSEE,
Sumner County:

I, Thomas H. King, clerk of the circuit court for the county aforesaid, do hereby certify that the foregoing is a full, true, and perfect transcript of the record and original papers in the case of the Howe Sewing Machine Company against Jesse Cage, clerk, &c., as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at office, in Gallatin, this the 13th day of November, A. D. 1876.

THOS. H. KING, *Clerk.*

[SUMNER CIRCUIT COURT OF TENNESSEE.]

18 Know all men by these presents that we, The Howe Machine Company, a corporation chartered by the laws of the State of Connecticut, and having its principal place of business in the State of Tennessee, at the city of Nashville, principal, and Geo. H. Owen, surety, are held and firmly bound unto Jesse Cage, clerk of the county court of Sumner County, Tennessee, in the sum of five hundred dollars, to be paid to the said Jesse Cage, clerk as aforesaid, his successors in office, &c., to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our successors, heirs, and personal representatives, firmly, by these presents, signed with our hands, sealed with our seals, and dated this the 3rd day of March, 1877.

The condition of the obligation is such, that whereas the above-named The Howe Machine Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment
19 rendered by the supreme court of the State of Tennessee on the 2nd day of March, 1877, in the cause wherein the said The Howe Machine Company is plaintiff and Jesse Cage, clerk of the county court of Sumner County, is defendant:

Now, therefore, if the above-named The Howe Machine Company shall prosecute its said writ of error with effect, or answer all costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE HOWE MACHINE CO., [SEAL.]
By GEO H. OWEN, *Manager.*
GEO. H. OWEN. [SEAL.]

Signed and sealed in the presence of, and approved by—
JAS. W. DEADERICK,
Chief Justice of Supreme Court of Tennessee.

MARCH 3RD, 1877.

20 Be it remembered that at a supreme court of errors and appeals, began and held at the capitol, in the city of Nashville, on the first Monday in January, A. D. 1877, it being the 1st day of January,

1877, for the 5th, 6th, 7th, 8th, 9th, 10th, 11th, and part of the 16th judicial circuits; present, the Hon. Chief Justice James W. Deaderick and associate justices John L. T. Sneed, Thos. J. Freeman, P. Turney, and Robert McFarland, when the following proceedings were had, to wit:

FRIDAY, *March* 2, 1877.

Court met pursuant to adjournment. Present, the honl. James W. Deaderick, chief justice, and associate justices Jno. L. T. Sneed, Thos. J. Freeman, P. Turney, and Robert McFarland, when the following proceedings were had, to wit:

21 *Judg't of supreme court.*

THE HOWE MACHINE CO.
vs.
JESSE CAGE, CLERK, &C.

This cause came on to be heard before the honorable supreme court of the State of Tennessee, on the 2nd day of March, 1877, upon the transcript of the record from the circuit court for the county of Sumner and argument of counsel; and it being represented by the plaintiff that the provision of section 30 of article 2 of the constitution of the State of Tennessee, that "no article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fee"; and of section 546 of the code of Tennessee, that "sales by peddlers of articles manufactured or made up in this State, and scientific or religious books, are exempt from taxation"; and of clause 10, section 5, chapter 79, of the acts
22 of the general assembly of 1867–8, that "all peddlers of sewing machines, or selling by sample, shall pay a tax of ten dollars"; and of clause 9, section 1, chapter 98 of the acts of 1875, that "all articles manufactured of the produce of the State" are exempt from taxation, being intended to discriminate in favor of articles manufactured of the produce of the State of Tennessee, and against articles manufactured of the produce of other States, or imported from other States, are in conflict with section 8 of article 1 of the constitution of the United States, which provides that "the Congress shall have power to regulate commerce with foreign nations, and among the several States, and among the Indian tribes," and with section 10 of article 1 of said constitution, which provides that "No State shall, without the consent of the Congress, levy any imposts, or duties on imports or exports, except what may be absolutely necessary for executing the inspection laws:
23 and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

And the court being of opinion that the statute which requires all peddlers of sewing machines to pay a tax of ten dollars is comprehensive, and applies alike to peddlers of sewing machines of home and foreign manufacturers, and is therefore not repugnant to the constitution of the United States; and the court being further of opinion that while the constitution of the State of Tennessee ordains that no article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees, it also ordains in section 28 of article 2 that "the legislature shall have power to tax merchants, peddlers, and privileges in such

manner as they may from time to time direct," and that these two clauses must be construed together and effect given to each; that con-
24 struing them together, it clearly appears that a distinction is expressed between a tax upon the article in specie and a tax upon the privilege of peddling the article, and the constitution conferred upon the legislature the power of enabling the enforcement of such distinction; and that these provisions of the constitution of the State of Tennessee, and the statutes aforesaid made in pursuance thereof, are not in conflict with the constitution of the United States, as claimed by the plaintiff.

It is therefore ordered and adjudged by the court that the judgment of the court below be affirmed, and that the plaintiff pay all the costs of this cause, for which execution may issue.

25 *Copy opinion.*

Sup. court of Tennessee.

HOWE MACHINE CO.
vs.
JESSE CAGE, CLERK, &C.

The constitution of the United States, § 8, ordains: "The Congress shall have power to regulate commerce with foreign nations, and among the several States, and among the Indian tribes."

§ 10. "No State shall, without the consent of the Congress, lay any imports or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

The constitution of the State of Tennessee, article 2, § 28, ordains:

"The legislature shall have power to tax merchants, peddlers,
26 and privileges in such manner as they may from time to direct."

§ 30 of article 2: "No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."

By an act of the general assembly of the State passed March 13, 1863, entitled "An act to amend the revenue laws of this State," ch. 79, § 4, sub § 10 it is provided, "All peddlers of sewing machines, or selling by sample, shall pay a tax of ten dollars."

By a later statute the tax is increased to fifteen dollars.

By an act passed March 25, 1875, all articles manufactured of the produce of the State are exempt from taxation.

The plaintiff in error manufactures its machines at Bridgeport, Connecticut, and have their principal office in Tennessee at Nashville. It paid its tax for 1876 for peddling in Sumner County under pro-
27 test, &c., and brings this action to recover back the amount so paid.

It is urged that some of these provisions of the State constitution and of the several acts are repugnant to the constitution of the United States, and therefore void.

To support this theory, the case of Welton vs. State of Missouri (1 Otto, 277) is cited.

In that case the statute questioned declares that "whoever deals in the sale of goods, wares, or merchandize, except books, charts, maps,

and stationary, which are not the growth, produce, or manufacture of the State, by going from place to place to sell the same, shall be deemed a peddler," and then enacts that no person shall deal as a peddler without a license, &c.

It is observed that statute aims directly at the importation and peddling of goods in the State, and is confined to those objects, discriminating between the citizen and non-resident.

28 Our statute is comprehensive, and applies to the resident as well as to the non-resident, to home manufacture as well as to the importer of foreign goods or goods manufactured out of and not of the growth or produce of the State. It is not an attempt to regulate commerce between the State of Tennessee and a sister State; nor is it an attempt to lay imposts or duties on imports or exports, but broadly levies a tax upon all peddlers of sewing machines, without regard to place of growth or produce of material or of manufacture.

Again: while our constitution ordains that no article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees, it also ordains, as we have already noticed, the legislature shall have power to tax merchants, peddlers, & privileges, &c.

These two clauses must be construed pari passu, and effect given to each.

29 Construing them together, it clearly appears the convention took and expressed a distinction between a tax upon the articles in specie and a tax upon the privilege of peddling the article, and conferred upon the legislature the power of enabling the enforcements of such distinction.

These clauses of our State constitution and the unrestricted words of the statutes make a wholly different case to that of Welton, with which the judgment of the circuit court is not in conflict, and will be affirmed.

TURNEY.

I, W. N. Cowden, clerk of the supreme court of Tennessee at Nashville, hereby certify that the foregoing contains a full, true, and perfect copy of the transcript of the record from the circuit court of Sumner County, and of the opinion and judgment of said supreme court, in the case of the Howe Machine Company, in error v. Jesse Cage, clerk of county court of Sumner County, as the same appears of record,

30 now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court at office in the capitol at Nashville on this the 23rd day of March, 1877, and the independence of the United States the 101st year.

W. N. COWDEN, *Clerk.*

Clerk's fee for record, $5.00, paid by the Howe Machine Company.

(Indorsement on cover:) No. 198. The Howe Machine Company, plaintiff in error, vs. Jesse Cage, clerk of the county court of Sumner County. Tennessee sup. court. Filed 28th September, 1877.

REC. 198—2

ARGUMENT OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 198.

THE HOWE MACHINE COMPANY, PLAINTIFF IN ERROR,

VS.

JESSE CAGE, CLERK OF THE COUNTY COURT OF SUMNER COUNTY.

In Error to the Supreme Court of the State of Tennessee.

Geo. B. Staddan & Co., Printers.

SUPREME COURT OF THE UNITED STATES.

No. 198.

THE HOWE MACHINE COMPANY, PLAINTIFF IN ERROR,

vs.

JESSE CAGE, CLERK OF THE COUNTY COURT OF SUMNER COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

ARGUMENT FOR THE PLAINTIFF IN ERROR.

The plaintiff in error, The Howe Machine Company, a duly incorporated company, engaged in manufacturing sewing machines at Bridgeport, Connecticut, established an agency at Nashville, Tennessee. From this point a peddler was sent to Sumner county, Tennessee, for the purpose of effecting sales of said machines. A tax was demanded from him by the defendant in error, for the privilege or license of peddling or selling said machines in said county, payment of which was refused upon the ground that the Constitution and laws of Tennessee, having exempted from taxation all articles manufactured from the produce of the State, and all sales by peddlers of articles manufactured or made up in the State, had discriminated injuriously against the products of other States, and the rights of their citizens, in violation of the Constitution of the United States, and that the privilege or license tax demanded was therefore illegal and ought not to be collected.

The law of Tennessee provides that in such cases the tax shall be paid under protest, and action brought, within thirty days, against the collecting officer to recover the amount so paid. The tax was accordingly paid under protest, and suit brought within the required time, which was decided against the plaintiff in error.

An agreement as to the facts was made, which is on pages 4 and 5 of the transcript, and the case appealed to the Supreme Court of Tennessee. The opinion of that court is on pages 8 and 9 of the transcript.

The error complained of in the decision of the Supreme Court of Tennessee is, that the plaintiff in error having claimed that the law of the State of Tennessee under which said plaintiff in error, located and manufacturing its machines in the State of Connecticut, was required to pay a tax for the privilege of peddling said machines in the State of Tennessee, was void, because the Constitution of the State of Tennessee exempts from taxation any article manufactured of the produce of the State, and the statute laws of said State exempt from taxation sales by peddlers of articles manufactured or made up in said State; which provisions of the Constitution and laws of the State of Tennessee, being a levy of duty on imports from another State, are repugnant to the Constitution of the United States; and the Supreme Court of Tennessee decided in favor of the validity of the State law taxing said privilege, and that said provisions of the Constitution and laws of the State of Tennessee were not in conflict with the Constitution of the United States.

The Constitution of the State of Tennessee, Art. 11, section 30, provides that "No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."

The Code of Tennessee, section 546, provides that "Sales by peddlers of articles manufactured or made up in this State, and scientific or religious books, are exempt from taxation." See also *Naff, Coffman and Martin* v. *J. D. Russell*, 2 Coldwell, 32; *Woolman* v. *The State*, 2 Swan, 353.

By Chapter 98, section 10, Acts of 1875, "all articles manufactured of the produce of the State" are exempt from assessment and taxation.

By the Code, section 553*a*, sub-section 43, "All peddlers of sewing machines, and selling by sample, shall pay a tax of ten dollars."

Subsequently, this tax was increased, by Act of Assembly, fifty per cent., and hence at the time of payment under protest by the plaintiff in error, the amount was fifteen dollars.

It is evident that the constitutional provision forbidding the taxation of any article manufactured of the produce of the State not having been changed, and the statutes made in pursuance of this provision remaining in full force, no law can be construed to contain a direction or authority to tax any such exempted articles.

It follows, therefore, that the statute which imposes a tax of ten dollars upon "all peddlers of sewing machines," must necessarily except such machines as are "manufactured of the produce of the State," and such as are "manufactured or made up in this State," and if the machines are "manufactured or made up in this State," "all sales by peddlers" of such machines "are exempt from taxation."

The plaintiff in error maintains that the discriminations thus made by the Constitution and laws of the State of Tennessee are in conflict with the parts of sections 8 and 10, of Article I, of the Constitution of the United States, which are as follows:

Section 8. "Congress shall have power to regulate commerce with foreign nations, and among the several States, and among the Indian tribes."

Section 10. "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for

the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

The questions arising in this case are precisely the same as those which were settled by the Supreme Court of the United States in the case of *Welton* v. *The State of Missouri*, 1 Otto, 275.

The statute of the State of Missouri declared those to be peddlers who dealt in the selling of articles, "not the growth, produce or manufacture of" that State, "by going from place to place to sell the same," and a privilege or license tax was required to be paid by every such peddler.

The statute of the State of Tennessee, without giving a definition of the word *peddler*, provides that "sales by peddlers of articles manufactured or made up in this State, are exempt from taxation." In *Woolman* v. *The State*, 2 Swan, 354, the Supreme Court of Tennessee said: "By the term peddler, we understand one who travels about the country on foot or in some kind of vehicle or in any other manner, and sells goods or small commodities by retail."

Thus the two statutes come to the same point from opposite directions, and the substance and effect of the enactments are identically the same in both.

The same reasoning which was used in *Welton* v. *Missouri*, in regard to the statute of that State, must in all respects apply to the statute of the State of Tennessee.

But the court decides that "the statute which requires all peddlers of sewing machines to pay a tax of ten dollars is comprehensive, and applies alike to peddlers of sewing machines of home and foreign manufacture," and Mr. Justice Turney, in delivering the opinion, says that it "broadly levies a tax upon all peddlers of sewing machines, without regard to place of growth, or produce of material, or of manufacture." In view of the positive directions of the Constitution of Tennessee and of existing laws, which have been hereinbefore set out, this decision would be strangely inconsistent, were it not for the well-known fact that *no sewing machines are at present manufactured in the State of Tennessee*. The decision is therefore an evasion, and mere specious appearance. The statute is no more "comprehensive" in this view than an enactment would be which levies a tax upon the selling of Michigan pine, or Pennsylvania coal, and is equally a tax upon imports. It is a discrimination "against the products of other States, in the conditions of their sale by a certain class of dealers," and is therefore void, and must continue to be while the exemptions in the Constitution and laws of Tennessee remain in force.

But the court, probably observing the fallacy contained in the portion of its decision above quoted, further is of opinion, and so decides, that the Convention which framed the Constitution "took and expressed a distinction between a tax upon the articles in specie and a tax upon the privilege of peddling the articles, and conferred upon the Legislature the power of enabling the enforcements of such distinction."

It is this very distinction which the Supreme Court of the United States in *Brown* v. *Maryland*, 12 Wheat, 425, 444, declared to be "only varying the form without varying the substance," and in *Welton* v. *Missouri*, 1 Otto, 279, Mr. Justice Field, delivering the opinion of the court, says: "A tax on the occupation of an importer was a tax on importation, and must add to the price of the article, and be paid by the consumer or by the importer himself in like manner as a direct duty on the article itself.

Treating the exaction of the license tax from the importer as a tax on the goods imported, the court held that the act of Maryland was in conflict with the Constitution; with the clause prohibiting a State, without the consent of Congress, from laying any impost or duty on imports or exports; and with the clause investing Congress with the power to regulate commerce with foreign nations."

The court further say: "So, in like manner, the license tax enacted by the State of Missouri from dealers in goods which are not the product or manufacture of the State, before they can be sold from place to place within the State, must be regarded as a tax upon such goods themselves," and the conclusion is reached that legislation thus discriminating against the products of other States is void under the Constitution of the United States. 1 Otto, 282.

The provisions of the Constitution and laws of Tennessee being identical in substance and effect with the statute of Missouri, thus held to be an infringement of the Constitution of the United States, the decision of the Supreme Court in *Welton* v. *Missouri* is in all respects applicable to this case, and the decision of the Supreme Court of Tennessee ought to be reversed.

P. McP. Smith,
Counsel of plaintiffs.